

## REMARKS

Applicant gratefully acknowledges the indication that claims 94 and 95 are allowed. While Applicant does not agree and rather emphatically disagrees with each and every rejection raised against claims 79-93 and 96-106, merely to advance prosecution and obtain protection for certain of the embodiments of the invention, claims 79-93 have been cancelled without prejudice and claims 96-106 have been amended to be dependent upon the allowed claims. This should put all the pending claims into form for allowance.

Applicant reserves all rights to pursue the subject matter removed from this application in a continuation application.

### Rejections Under Section 112

Claims 79-93 and 96-106 are rejected under Section 112, first paragraph as allegedly not described with respect to sequences that are homologous to or variants of SEQ ID. No: 2.

Although Applicant does not agree with and in no way acquiesces with this rejection, as detailed above, merely to advance prosecution and obtain allowance of claims to certain embodiments of this invention, claims 79-93 are cancelled without prejudice and claims 96-106 are amended to be dependent upon claims 94 and 95 to which this rejection does not apply. Applicant fully reserves all rights to pursue the previously claims subject matter in a continuation application.

In light of the above amendments, it is submitted that this rejection is moot and must be withdrawn.

Claims 91-93 are rejected under Section 112, second paragraph.

As explained above, although Applicant does not agree, these claims are cancelled without prejudice and Applicant reserves all rights to pursue the subject matter of these claims in a continuation application.

Accordingly, this rejection is moot and must be withdrawn.

### Rejections Under Sections 102 and 103

Claims 79-89, 91-93 and 96-105 are rejected under Section 102(b) as anticipated by WO 9928474 to Graffais ("Graffais"), which is alleged to show PMPE.

Claims 79-89, 91-93 and 96-105 are also rejected under Section 102(a) as anticipated by WO 00/34483 to Probst ("Probst"), which is alleged to show PMPE.

Claims 79-89, 91-93 and 96-105 are also rejected under Section 102(e) as anticipated by U.S. Patent No. 6,432,916 to Probst which is alleged to show PMPE and pharmaceutical compositions.

Claims 79-90 and 96-106 are rejected under Section 103 as obvious in view of Probst in combination with Murdin et al. 1993 Infec. Immun. pp. 4406-4414.

Applicant emphatically disagrees and does not acquiesce with any of these rejections! However, merely to advance prosecution and obtain protection for certain embodiments of the invention, the rejected claims have been either cancelled without prejudice or amended to be dependent upon claim 94 or 95 which were not rejected. Applicant fully reserves all rights to argue against the grounds for these rejections and pursue the cancelled subject matter in a continuation application. Accordingly, these rejections are moot and must be withdrawn.

Clarification of Record

On page 2, the Office Action indicates that the Response to the previous Office Action and RCE were submitted on November 5, 2002. Further the Office Action indicates that Exhibits 1-17 were not received and hence not made of record.

In reply, it is noted that the RCE and Response with Exhibits 1-17 and a Supplemental Information Disclosure Statement with References BO-BW (and other documents) were submitted via Express Mail on October 15, 2002. The PTO incorrectly stamped the receipt post-card as received on October 16, 2002. On November 5, 2002, the undersigned submitted a Petition to Correct the Filing Date of the RCE and Response. The Petition included a copy of the previously submitted RCE and Response but not Exhibits 1-17 in order not to overburden the file.

Submitted herewith is a copy of the Supplemental Information Disclosure Statement and PTO 1449 listing References BO-BW and a copy of Refs BO-BW originally submitted on October 15, 2002. It is requested that these references be made of record in the file and that an initialed copy of the PTO 1449 form be returned to the undersigned. In order not to overburden the records, a copy of Exhibits 1-17 is not submitted.


Also newly submitted is a Third Supplemental Information Disclosure Statement and PTO 1449 listing Reference CC and a copy of Reference CC. It is requested this reference be made of record and an initialed copy of the PTO 1449 form be returned to the undersigned.

If any issues remain, it is requested that the undersigned be called at (212)

790-2296.

Respectfully submitted,

Date: August 12, 2003

  
Geraldine F. Baldwin 31,232  
(Reg. No.)

**PENNIE & EDMONDS LP**  
1155 Avenue of the Americas  
New York, New York 10036-2711  
(212) 790-9090